

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Case No. CR607-002
)	
STEVEN HENRY)	

REPORT AND RECOMMENDATION

Defendant Steven Henry seeks leave to appeal *in forma pauperis* (IFP) the Court’s ruling on his 28 U.S.C. § 3582(c)(2) sentence reduction motion. Doc. 31. Despite his apparent poverty, however, “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). A defendant's good faith is demonstrated when he seeks appellate review of any issue that is not frivolous. *United States v. Alvarez*, 506 F. Supp. 2d 1285, 1290 (S.D. Fla. 2007), *citing Coppedge v. United States*, 369 U.S. 438 (1962). Hence, an IFP application may be denied “if it appears -- objectively -- that the appeal cannot succeed as a matter of law.” *Id.*, *citing DeSantis v. United Technologies Corp.*, 15 F. Supp. 2d 1285, 1289 (M.D. Fla. 1998), *aff’d*, 193 F.3d 522 (11th Cir. 1999). Further, a case is

frivolous for IFP purposes if it appears that there is “little or no chance of success.” *Id.*, citing *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993).

Here, the district judge, exercising his discretion, reduced Henry’s sentence under the Fair Sentencing Act of 2010, Pub. L. 111-220 and related United States Sentencing Guidelines provisions, doc. 26, but apparently not enough. Stevens, however, has not offered any facts or argument suggesting that the judge’s decision amounted to an abuse of discretion. Hence, the Court certifies that his appeal is not taken in good faith under 28 U.S.C. § 1915. His IFP motion thus should be **DENIED**.

SO REPORTED AND RECOMMENDED this 30th day of March, 2012.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA